

CALIFORNIA BOARD OF LEGAL SPECIALIZATION OF THE STATE BAR OF CALIFORNIA



180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639
TELEPHONE: (415) 538-2100

DATE: June 8, 2005

TO: Members of the Board Committee on Member Oversight

FROM: Alice J. MacAllister, Chair, Board of Legal Specialization
Phyllis J. Culp, Director, Office of Certification

SUBJECT: Proposed Amendments to Legal Specialization Program Rules – Request for Public Comment

EXECUTIVE SUMMARY

The Board of Legal Specialization (BLS) and the Office of Certification (OC) requests that this Board Committee publish proposed amendments to sections 7.1 and 7.2.1 of the Rules Governing the State Bar of California Program for Certifying Legal Specialists (Rules), as set forth below, for a 90-day public comment period.

Specialists certified under the Legal Specialization program have a 45-hour CLE requirement for certification and a 60-hour requirement every five years in order to maintain certification. To enable certified specialists to identify specialist-level education that they can use to comply with the CLE requirement, the Legal Specialization program, like the MCLE program, approves individual CLE activities and grants approved provider status, although the Legal Specialization program limits its approval to specified areas of law. For example, an individual activity is designated as approved for legal specialist credit in family law, or a provider is granted approved provider status in appellate and criminal law.

Individual activities approved for legal specialist credit are automatically approved for MCLE credit. However, approved Legal Specialization provider status is limited to specialist-level courses and does not cover the required MCLE topics (legal ethics, unless specific to the area of law, substance abuse, and elimination of bias in the legal profession). As a result, CLE providers will apply for both MCLE and Legal Specialization approval in order to be able to give as wide a range of courses as possible.

At present, CLE providers who want to be approved to offer both MCLE and Legal Specialization credit are subject to two different sets of approval criteria (see chart below). The OC is proposing to coordinate the approval of MCLE and Legal Specialization activities and providers in a way that would lessen the administrative burden for both providers and staff. The BLS is hoping to encourage more providers to apply for legal specialist credit and agrees that streamlining the process is a necessary step in that direction.

The BLS and the OC are recommending that sections 7.1 and 7.2.1 of the Rules be amended to conform the approval period for Legal Specialization CLE activities and providers to that of MCLE by extending the approval period for activities from one year to two years and providers from two years to three years.

The proposed changes are discussed in detail below. Board members with questions on this item may contact Phyllis Culp at (415) 538-2118 or phyllis.culp@calbar.ca.gov.

BACKGROUND

The Legal Specialization program was first approved by the Supreme Court of California in 1972 as a pilot attorney certification program to identify for the public attorneys who have demonstrated their experience and proficiency in specific areas of law, and to encourage attorney competence. The program was made permanent by the Supreme Court in 1985 and currently certifies approximately 4150 attorneys, including approximately 150 who are on judicial service, in eight specialty areas: Appellate Law; Bankruptcy Law; Criminal Law; Estate Planning, Trust and Probate Law; Family Law; Immigration and Nationality Law; Taxation Law; and Workers' Compensation Law.

To be certified as a specialist, an attorney must pass a written examination, demonstrate experience based on performance of a variety of activities related to the specialty area, complete continuing education in the specialty area, and be favorably evaluated by other attorneys and judges familiar with the attorney's work.

The CLE requirement is 45 hours for certification and 60 hours every five years in order to maintain certification. To enable certified specialists to identify specialist-level education that they can use to comply with the CLE requirement, the Legal Specialization program, like the MCLE program, approves individual CLE activities and grants approved provider status, although the Legal Specialization program limits its approval to specified areas of law. For example, an individual activity is designated as approved for legal specialist credit in family law, or a provider is granted approved provider status in appellate and criminal law.

While individual activities approved for legal specialist credit are automatically approved for MCLE credit, approved Legal Specialization provider status is limited to specialist-level courses and does not cover the required MCLE topics (legal ethics, unless specific to the area of law, substance abuse, and elimination of bias in the legal profession). As a result, CLE providers will apply for both MCLE and Legal Specialization approval in order to be able to give as wide a range of courses as possible.

DISCUSSION

At present, CLE providers who want to be approved to offer both MCLE and Legal Specialization credit are subject to two different sets of approval criteria:

Application	Approval Period
MCLE Provider	Three years
Legal Specialization Provider	Two years
MCLE Activity	Two years
Legal Specialization activity	One year

The OC's MCLE and Legal Specialization staff have been discussing ways to coordinate the approval of MCLE and Legal Specialization activities and providers in a way that would lessen the administrative burden for both providers and staff. The BLS is hoping to encourage more providers to apply for legal specialist credit and agrees that streamlining the process is a necessary step in that direction.

PROPOSAL

OC staff and the BLS are proposing that the approval period for Legal Specialization CLE activities and providers be conformed to that of MCLE by extending the approval period for

activities to two years and three years for providers. In order to extend the approval periods, the Legal Specialization Rules will need to be amended as follows:

7.1 Individual Activity Approval

Approval extends to all offerings of the same activity, including tapes, within ~~one~~ two years of approval of the activity.

7.2 Approval of Providers

- 7.2.1 Approval may be extended in advance to a continuing education provider for not more than ~~two~~ three years for all educational activities presented by the provider which the provider certifies conform to the requirements of section 7.3.

FISCAL AND PERSONNEL IMPACT

There is no fiscal and personnel impact on the general fund. The Legal Specialization Program is a restricted fund program that pays all its direct and indirect (interfunded) costs.

PROPOSED BOARD COMMITTEE ACTION

Should the Board Committee determine to adopt the recommendation of the BLS and the OC, it would be appropriate to adopt the following resolution:

RESOLVED, that the Board Committee on Member Oversight directs the publication of proposed revisions to the Rules Governing the California Program for Certifying Legal Specialists, in the form attached to these minutes and made a part hereof, for a 90-day comment period; and it is

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation by the Board Committee.